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August 2, 2002

TN REGULATORY AUTHORITY
DOCKET ROOM

VIA HAND DELIVERY

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
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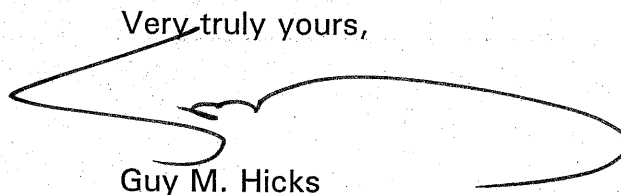
Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of
the Telecommunications Act of 1996*
Docket No. 97-00309

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth Telecommunications, Inc.'s Comments Regarding Consolidation of OSS Issues Into the 271 docket and Request that the Hearing Officer Take Administrative Notice of the Department of Justice Comments Released on July 30, 2002. Copies of the enclosed have been provided to counsel of record.

Very truly yours,

Guy M. Hicks



GMH/jej

Enclosure

cc: The Honorable Debi Tate, Hearing Officer

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

BELLSOUTH TELECOMMUNICATIONS, INC.'S
COMMENTS REGARDING CONSOLIDATION OF
OSS ISSUES INTO THE 271 DOCKET AND
REQUEST THAT THE HEARING OFFICER TAKE
ADMINISTRATIVE NOTICE OF THE DEPARTMENT OF JUSTICE
COMMENTS RELEASED ON JULY 30, 2002

BellSouth Telecommunications, Inc. ("BellSouth") files these Comments Regarding Consolidation of OSS Issues into the 271 Docket and Request that the Hearing Officer Take Administrative Notice of the Department of Justice Comments Released on July 30, 2002 and respectfully shows the Hearing Officer as follows:

I. BELLSOUTH'S REQUEST THAT THE HEARING OFFICER TAKE ADMINISTRATIVE NOTICE OF DEPARTMENT OF JUSTICE COMMENTS ON BELLSOUTH'S FIVE-STATE 271 FILING.

BellSouth respectfully requests that the Hearing Officer take administrative notice of the comments of the Department of Justice released on July 30, 2002 in BellSouth's five-state 271 filing. In its comments, the DOJ explicitly recommends that the FCC approve BellSouth's five-state 271 application, subject to the FCC's review of a few remaining concerns. Even as to its small remaining concerns, moreover, the DOJ repeatedly recognizes that BellSouth is addressing those concerns. The Authority has taken administrative notice of prior FCC developments relating to 271 approval in the

BellSouth region, and BellSouth respectfully submits that taking administrative notice of the Department of Justice's most recent comments will provide the Authority with similar important information relevant to the Authority's decisions in this docket. BellSouth attaches a copy of the Department of Justice comments for ease of reference.

II. BELLSOUTH'S COMMENTS REGARDING CONSOLIDATION OF CHECKLIST ITEM 2 INTO THE 271 DOCKET.

BellSouth is prepared to proceed with a 271 hearing next week addressing *all* of the issues included on the Staff-presented issues list, which was distributed at the Pre-Hearing Conference and which reflected the issues list proposed by the parties. That list includes, *as did the CLEC-proposed issues list*, Checklist Item 2. The hearing should track that list. The CLEC assertion that some further proceeding should be held is nothing more than an attempt to delay and derail the relief sought by BellSouth. As discussed in more detail below, the CLECs have raised no legitimate issue necessitating further hearings.

During the Pre-Hearing Conference on July 30, 2002, the Hearing Officer addressed the issue of merging into the 271 docket the non-discriminatory access issue regarding BellSouth's operational support systems ("Checklist Item 2"). BellSouth fully supports the consolidation of Checklist Item 2 into the 271 docket. As has been observed by members of the Authority throughout these proceedings, issues concerning OSS and 271 relief are inextricably linked. Because these issues form a portion of the required elements for 271 relief, BellSouth believes that it is fully appropriate that these issues be heard in the context of this docket just as the issues list provides.

Consequently, BellSouth indicated its intention to proceed, as planned with its case. The Hearing Officer noted on this point that, "If [BellSouth is] planning on trying -- putting on evidence in part of your case about OSS, which it sounds like you are, then I guess you would proceed in that direction." (Transcript, p. 31, lines 5-8). In addition, as noted by TRA attorney Lynn Questell during the July 30, 2002 Pre-Hearing Conference, "It is your case to put on, BellSouth. You can put on what you want." (Transcript, p. 32, lines 17-18). Ms. Questell further observed that "if [BellSouth] want[s] to put nondiscriminatory access evidence on this next week, that's [BellSouth's] business." *Id.* at 33. Indeed, BellSouth intends to present evidence during its 271 case, in response to CLEC allegations that BellSouth is non-compliant, that will demonstrate that it provides nondiscriminatory access to its OSS in Tennessee and is fully compliant with Checklist Item 2. BellSouth believes this evidence is properly presented in light of the significant pre-filed testimony on this topic and the inclusion of this issue on the parties' joint proposed issues list and the Staff-prepared issues list. Specifically, at a minimum, CLEC witnesses Bradbury, Darnell, Lichtenberg, Davis, Conquest, and Ivanuska all filed testimony addressing Checklist Item 2 and BellSouth witnesses Pate, McElroy, Ainsworth, and Scollard, filed rebuttal testimony addressing Checklist Item 2. Moreover, given the substantial litigation of this issue in other states, no party can seriously contend at this late date that more time is needed for parties to prepare to try this issue.

No party would be prejudiced if Checklist Item 2 is considered in the context of the 271 docket. The CLECs participating in this docket have had an opportunity for full

discovery relating to BellSouth's compliance with Checklist Item 2. In fact, the CLECs have taken full advantage of the opportunities for discovery by propounding more than 30 interrogatories and 20 requests for documents relating to Checklist Item 2 since BellSouth filed its direct case on July 30, 2001. BellSouth has responded fully to each of those requests. In addition, Checklist Item 2 was included among the CLEC-proposed issues list for the 271 docket. Accordingly, the CLECs not only were well aware that the issue may be addressed in this docket, they specifically requested that the issue be addressed in the context of the 271 docket rather than in the OSS docket.

The CLECs' argument that an additional, later hearing is needed must be considered in the full context of the positions advanced by those parties in both the 271 and the OSS dockets. As those dockets have proceeded, these same parties have taken every opportunity to argue in one docket that the hearing is more properly raised in the other, asserting in the OSS docket that the matter must be addressed later in the 271 docket, while now arguing in the 271 docket that it should not be addressed there either, until some date in the future. AT&T's motive seems clear -- delay. AT&T has argued to delay, in the past, a hearing on Checklist Item 2, postponing it to be heard "either in a subsequent phase in the OSS docket, not Phase II, or in the 271 docket" as explained by counsel for AT&T at the Pre-Hearing Conference. (Transcript, p. 23, lines 12-13). Now, AT&T will tell the Authority that the OSS issues ought not be heard during the Section 271 hearing. AT&T and the other CLECs are merely continuing their strategy of delay -- seeking to avoid a hearing on the matter in either docket.

Conversely, the CLECs objected to the inclusion of Checklist Item 2 among the issues list for the OSS docket. See Opposition to BellSouth's Proposed Revisions to Phase II Issues List of AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc., MCI WorldCom, Inc. and Southeastern Competitive Carriers Association, at pp. 8-9. Arguing that "it could be difficult to make clear distinctions on whether an issue belongs in the OSS docket or the Section 271 docket," AT&T and the other CLECs urged the Authority to exclude Checklist Item 2 from the Phase II issues in the OSS docket.

AT&T's arguments amount to a pattern of seeking to delay, or avoid all together, a hearing on Checklist Item 2. As they did in the OSS docket in January, the CLECs continue to argue that Checklist Item 2 should be heard at some unspecified date in the future, in order to avoid concluding the hearings on the issues relating to BellSouth's 271 application.

Addressing Checklist Item 2 in the context of the 271 docket creates no legitimate due process issues for the CLECs. During the course of the Pre-Hearing Conference, counsel for AT&T and counsel for Covad raised concerns regarding due process issues relating to addressing Checklist Item 2 in the context of the 271 docket. As discussed below, none of these arguments has merit.

First, AT&T urged that it had not been afforded an opportunity to "rebut" the testimony provided by BellSouth relating to Checklist Item 2. This is not a legitimate due process issue. The BellSouth testimony that AT&T complains it has been unable to "rebut" was filed itself as rebuttal testimony. The CLECs filed voluminous testimony

alleging that BellSouth did not comply with the requirements of Checklist Item 2. Specifically, CLEC witnesses Bradbury, Darnell, Lichtenberg, Davis, Conquest, and Ivanuska all filed testimony addressing Checklist Item 2. The CLECs have opened the door on this issue, and cannot now complain when BellSouth rebuts the allegations pertaining to Checklist Item 2 that the CLECs themselves raised. The CLECs are well represented in this case, and no doubt they fully understood the procedural schedule in this proceeding. They knew when they filed their rebuttal testimony that BellSouth had an opportunity to file rebuttal as well, yet they deliberately and intentionally chose to file the testimony on Checklist Item 2. They cannot possibly claim that they have been denied due process in these circumstances. Moreover, the CLECs themselves proposed making Checklist Item 2 an issue in this case, and they should not be heard to complain that BellSouth's testimony on the issue is somehow improper.

AT&T does not have a due process right to provide further testimony in response to the BellSouth testimony filed in response to its own testimony. Having raised the issue itself, both in its testimony and by virtue of its proposed issues list, AT&T should have fully vetted the matter in its direct case. AT&T does not have a due process right in the context of an administrative proceeding to rebut rebuttal testimony. Moreover, AT&T will have the opportunity to cross examine BellSouth's witnesses during the hearing on this matter.

With respect to the due process concerns raised by Covad, counsel for Covad asserted during the Pre-Hearing Conference that "unlike AT&T, Covad did not submit any evidence on the OSS issue" (Transcript, July 30, 2002 Pre-Hearing

Conference, at p. 20, lines 21-22). Reference to the record in this case, however, reveals that this statement is flatly wrong. Contrary to counsel's representation, Covad witness Collette Davis unequivocally states that her pre-filed testimony "*will focus on Checklist Item 2 (non-discriminatory access to Unbundled Network Elements, like OSS) and Checklist Item 4 (non-discriminatory access to loops). See Davis Testimony at 3 (emphasis added).*" With regard to Checklist Item No. 2, Ms. Davis testifies that

BellSouth has the burden of proving at least two things: (1) that it has deployed the necessary *OSS systems* and personnel to support those systems for use by competitors; and (2) that *its systems* are operationally ready, as shown either by testing or by commercial usage. *As my testimony will show, BellSouth cannot prove either of these requirements.*

Id. at 3-4 (emphasis added). Ms. Davis then devotes substantial portions of her testimony to her erroneous contentions that "BellSouth has not deployed *the OSS systems* necessary to comply with Checklist Item 2," *id.* at 4-13 (emphasis added), and that "BellSouth's *OSS systems* are not operationally ready to support competition." *Id.* at 13-21 (emphasis added).

Even the most cursory review of Ms. Davis' testimony shows that Covad raised Checklist Item 2 as an issue in this docket. Even assuming that counsel's inaccurate representations resulted from unawareness of the substance of the client's testimony, the fact is that Covad's assertion that it has not received due process because it has not had an opportunity to file testimony relating to this issue is absolutely incorrect. Reference to Covad's own testimony shows that it has filed testimony on Checklist Item 2, notwithstanding counsel's comments to the contrary at the Pre-Hearing Conference. Covad has no due process right to file its testimony on this issue in serial installments.

Covad is not seeking a due process opportunity to be heard for the first time, as counsel suggested at the Pre-Hearing Conference. Rather, it seeks instead to have the proverbial "second bite" at the OSS apple by filing further testimony.

In short, the parties in this docket have been well aware for nearly two years that Checklist Item 2 was relevant to the relief sought in BellSouth's petition for long distance relief and would be heard either in this docket or in the OSS docket. No party can legitimately assert that it has been surprised or prejudiced, particularly given the fact that the CLECs themselves raised the OSS issue in this case. The evidentiary filings and pleadings of the very parties who now object to having this issue raised in the context of the 271 docket demonstrate that those parties in fact proposed that the issue be heard in the context of the 271 docket rather than in Phase II of the OSS docket. Those parties cannot now seriously contend that they will be prejudiced in any way if Checklist Item 2 is considered in the context of this docket.

BellSouth has endeavored to present its Checklist Item 2 evidence numerous times to the TRA. BellSouth's efforts to get the evidence and issues on the table, in order to allow this matter to proceed, have been met with procedural angling from the CLECs seeking to delay the progress of 271 relief. BellSouth has urged in the past that the bifurcation of this matter would result in procedural confusion and delay. Notwithstanding that past procedural detour, now the parties are all ready to address this issue -- just as it was addressed in pre-filed testimony.

Finally, as a matter of administrative economy, the parties should proceed to address Checklist Item 2 at the hearing next week. Because both BellSouth and CLEC

witnesses addressed Checklist Item 2 along with other issues, the sheer administrative burden of separating or redacting the pages of testimony that address Checklist Item 2 would be more troublesome, confusing, and time consuming than it would be for the agency to simply proceed to hear the evidence on all of the issues regarding which pre-filed testimony was submitted. The very fact that CLEC testimony would need to be withdrawn or redacted demonstrates that the CLECs are attempting to maneuver a substantial change in course. How can the CLECs seriously argue that they aren't ready to proceed at the same time they are scrambling to take back, through redaction, the testimony they filed in preparation to try this issue and the issue they themselves included in their proposed issues list?¹

The Authority has set aside the time to have these hearings, which have been set for months. Moreover, the parties have already made travel arrangements to bring numerous witnesses to Tennessee. Given that the evidence has already been submitted in the form of pre-filed testimony, and these witnesses are prepared to travel in Tennessee during the days set aside for these hearings, it would be a dramatic waste of administrative effort if the Authority failed to take full advantage of these days when these witnesses and these parties are available to proceed. Given that the parties are prepared to proceed, it would constitute the most reasonable use of Authority resources

¹ Ironically, during the Pre-Hearing Conference, the CLECs were clamoring to add evidence, not take it back. Rather than wasting time withdrawing their testimony, they should instead be doing as instructed by the Hearing Officer, namely getting whatever they wanted to show the Authority before the Authority. Notably, however, those instructions were provided by the Hearing Officer only in response to Covad's inaccurate representation that it had not yet filed any Checklist Item 2 testimony. As noted above, that assertion was simply not correct.

if the Authority proceeded during the week of August 6th with all of the issues identified on the Issues List discussed at the Pre-Hearing Conference, including Checklist Item 2. It would be, indeed, a waste of the Authority's time and efforts if the Authority was persuaded to forego the opportunity to address the matter as scheduled during the week of August 6th and, it was discovered, after the fact, that the CLECs have no new or additional distinct evidence to offer on this issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2002, a copy of the foregoing document was served on the parties of record, via hand delivery, facsimile, overnight or US Mail, addressed as follows:

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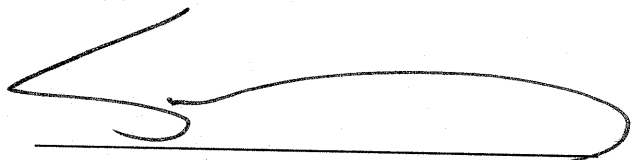
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A large, stylized handwritten signature in black ink, appearing to be a cursive representation of a name, possibly "Nanette S. Edwards".



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, JULY 30, 2002
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPARTMENT RECOMMENDS APPROVAL OF BELL SOUTH'S APPLICATION TO PROVIDE LONG DISTANCE SERVICES IN FIVE SOUTHERN STATES

*Alabama, Kentucky, Mississippi, North Carolina And South Carolina Affected,
Further Improvement In BellSouth's OSS And Performance Measures Expected*

WASHINGTON, D.C. - The Department of Justice today recommended that the Federal Communications Commission (FCC) approve BellSouth's application to provide long distance services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. At the same time, the Department's evaluation recognizes that BellSouth has made substantial progress in addressing issues identified by the Department, but anticipates further improvements in the process through which upgrades to OSS software are developed and prioritized. As in previous evaluations of BellSouth applications, the Department's evaluation focuses on the management of changes to BellSouth's operations support systems (OSS), and modifications to the measures used to track the performance of those systems.

"Conditions in the local telecommunications markets in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina now appear favorable to fostering competition," said Charles A. James, Assistant Attorney General in charge of the Department's Antitrust Division. "In particular, competitors have made progress in penetrating the business markets in those five states."

The Department also addresses the need for advance disclosure by BellSouth of changes it may make in calculating the metrics used to report its commercial performance. The Department recommended that the Commission review these concerns to be satisfied that they have been addressed.

The Department provided its competitive analysis in the evaluation of BellSouth's application to provide long distance services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina under Section 271 of the Telecommunications Act of 1996.

Since the break-up of the integrated Bell system as part of the AT&T divestiture, the independent Bell Operating Companies, or BOCs, have been barred from providing long distance services in their respective regions, first as part of the divestiture decree, and now under the terms of the Telecommunications Act. Under Section 271 of the Act, a BOC, such as BellSouth, may not provide in-region long distance services until it demonstrates to the FCC that it has met

a variety of legal requirements designed to open the local telecommunications markets in a particular state to competition.

In considering whether to approve a BOC's application for long distance authority in a particular state, the FCC must consult with the Department of Justice and give "substantial weight" to its assessment of competitive conditions and whether the BOC should be allowed to provide in-region long distance

services.

BellSouth filed its application with the FCC on June 20, 2002. Under the terms of the Act, the FCC must approve or deny the application within 90 days. A copy of the Department's evaluation will be available at: <http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm>.

###

02-438

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Joint Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc.,) WC Docket No. 02-150
and BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA Services)
in Alabama, Kentucky, Mississippi, North)
Carolina, and South Carolina)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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July 30, 2002

Telecommunications and Media
Enforcement Section

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INDEX OF FULL CITATIONS	
Short Citation	Full Citation
DOJ Evaluations and Related Materials	
DOJ Georgia/Louisiana I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 01-277 (Nov. 6, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Georgia/Louisiana II Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 21, 2002), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Missouri I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri</i> , FCC CC Docket No. 01-88 (May 9, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Oklahoma I Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application of SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma</i> , FCC CC Docket No. 97-121 (May 16, 1997), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
DOJ Pennsylvania Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , FCC CC Docket No. 01-138 (July 26, 2001), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
FCC Orders, Reports, and Related Materials	
FCC Georgia/Louisiana Order	Memorandum Opinion and Order, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , FCC 02-147 (May 15, 2002), available at 2002 WL 992213 and < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
State Commission Orders and Related Materials	
Alabama PSC Comments	Comments of the Alabama Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
BellSouth NC PMAP Notice	Letter from Edward L. Rankin III, BellSouth Telecommunications, Inc., <i>In re: Application of BellSouth Telecommunications, Inc., to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996</i> , North Carolina UC Docket No. P-55, Sub 1022 (July 19, 2002), available at < http://ncuc.commerce.state.nc.us/docksrch.html >.
CLEC Coalition/BellSouth CCP Redline/Greenline	GA-PSC Staff Version, Filed Jointly by the CLEC Coalition and BellSouth on July 5, 2002, BellSouth Change Control Process, CCP05_29.doc, Version 3.1, May 29, 2002, <i>In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (July 5, 2002), available at < www.psc.state.ga.us >.
Florida PSC Software Defect Order	Notice of Proposed Agency Action Order Revising Performance Assessment Plan, <i>In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth Track)</i> , Florida PSC Docket No. 000121A-TP (July 22, 2002), available at < www.psc.state.fl.us >.
Florida PSC Staff CCP Proposal	Memorandum, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TL; <i>In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory</i> , Florida PSC Docket No. 981834-TP (July 15, 2002), available at < www.psc.state.fl.us >.
Florida PSC Staff Change Request Implementation Proposal	Memorandum, <i>In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth Track)</i> , Florida PSC Docket No. 000121A-TP (July 25, 2002), available at < www.psc.state.fl.us >.

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Florida PSC Vote Sheet	Vote Sheet, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TL; <i>In re: Petition of Competitive Carriers for Commission Action to Support Local Competition in BellSouth Telecommunications, Inc.'s Service Territory</i> , Florida PSC Docket No. 981834-TP (July 23, 2002), available at < www.psc.state.fl.us >.
Georgia PSC Georgia/Louisiana II Comments	Comments of the Georgia Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 4, 2002).
Georgia PSC Georgia/Louisiana II Reply Comments	Reply Comments of the Georgia Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 28, 2002).
Georgia PSC PM Change Notification Order	Order Establishing a Procedure for Implementation of Changes to BellSouth's Performance Measurement Calculations, <i>In re: Performance Measures for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (July 19, 2002), available at < www.psc.state.ga.us >.
Kentucky PSC Comments	Comments of the Kentucky Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 8, 2002).
KPMG FL Draft Final Report	KPMG Consulting, BellSouth Telecommunications, Inc., OSS Evaluation Project Draft Final Report Version 1.0, <i>In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996 (Third Party OSS Testing)</i> , Florida PSC Docket No. 960786B-TP (June 21, 2002), available at < http://www.psc.state.fl.us/industry/telecomm/oss/oss.cfm >.
KPMG FL OSS Test Exceptions	Florida PSC Operations Support Systems Testing, BellSouth-Florida OSS Test Exceptions, available at < http://www.psc.state.fl.us/industry/telecomm/oss/exceptions.cfm >.
Louisiana PSC Georgia/Louisiana II Reply Comments	Reply Comments of the Louisiana Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , FCC CC Docket No. 02-35 (Mar. 28, 2002).

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Mississippi PSC Comments	Comments of the Mississippi Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 10, 2002).
North Carolina UC Comments	Comments of the North Carolina Utilities Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 9, 2002).
North Carolina UC Notice of Decision	Notice of Decision, <i>In re: Application of BellSouth Telecommunication, Inc., to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996</i> , North Carolina UC Docket No. P-55, Sub 1022 (May 23, 2002), attached to BellSouth Br. App. C - North Carolina as Tab 24.
SECCA Emergency Motion	Emergency Motion of the Southeastern Competitive Carriers Association to Establish a Procedure for Implementation of Changes to the Service Quality Measures, <i>In re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale</i> , Georgia PSC Docket No. 7892-U (June 12, 2002), available at <www.psc.state.ga.us>.
South Carolina PSC Comments	Comments of the South Carolina Public Service Commission, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
South Carolina PSC Section 271 Order	Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, <i>In re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996</i> , South Carolina PSC Docket No. 2001-209-C (Feb. 14, 2002), attached to BellSouth Br. App. C - South Carolina as Tab 33.
BellSouth's Application and Related Filings	
BellSouth Br.	Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (June 20, 2002).

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BellSouth FL OSS Test <i>Ex Parte</i>	BellSouth Corp., BellSouth Responses to Not Satisfied Florida OSS Test Exceptions, BellSouth <i>Ex Parte</i> Submission, FCC WC Docket No. 02-150 (July 10, 2002).
BellSouth Line Counts <i>Ex Parte</i>	BellSouth Corp., BellSouth Corrected Line Counts, BellSouth <i>Ex Parte</i> Submission, FCC WC Docket No. 02-150 (July 2, 2002).
BellSouth Stacy Aff.	Affidavit of William N. Stacy, <i>attached to</i> BellSouth Br. App. A as Tab I.
BellSouth Stockdale Aff.	Affidavit of Elizabeth A. Stockdale, <i>attached to</i> BellSouth Br. App. A as Tab J.
BellSouth Varner Aff.	Affidavit of Alphonso J. Varner for Alabama, Kentucky, Mississippi, North Carolina and South Carolina, <i>attached to</i> BellSouth Br. App. A as Tab K.
Third-Party Comments and Affidavits/Declarations	
AT&T Comments	Supplemental Comments of AT&T Corp. in Response to BellSouth Corporation's Supplemental Brief, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
Birch Comments	Comments of Birch Telecom of the South, Inc., <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
Covad Comments	Comments of Covad Communications Company, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by BellSouth for Authorization to Provide In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina</i> , FCC WC Docket No. 02-150 (July 11, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, <i>attached to</i> WorldCom Comments as Tab A.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Joint Application by BellSouth Corporation,
BellSouth Telecommunications, Inc.,
and BellSouth Long Distance, Inc. for
Provision of In-Region, InterLATA Services
in Alabama, Kentucky, Mississippi, North
Carolina, and South Carolina

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WC Docket No. 02-150

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice ("Department"), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ ("1996 Act"), submits this evaluation of the joint application filed by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., on June 20, 2002, to provide in-region, interLATA services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina. This application is BellSouth's first for Alabama, Kentucky, Mississippi, and North Carolina, and its second for South Carolina.²

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company ("BOC") should be permitted only when the local markets in a state have

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² BellSouth filed its initial application for long distance authority in South Carolina on September 30, 1997; the Department submitted its evaluation of that application on November 4, 1997; and the FCC denied the application on December 24, 1997. More recently, however, BellSouth's joint application for long distance authority in Georgia and Louisiana was approved by the Commission on May 15, 2002.

been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services -- are fully and irreversibly open to competitive entry to serve both business and residential customers.

The Department’s Georgia/Louisiana I and Georgia/Louisiana II Evaluations focused on issues related to BellSouth’s Operational Support Systems (“OSS”) and performance metrics.⁴ In its Georgia/Louisiana II Evaluation the Department expressed several concerns regarding BellSouth’s compliance with appropriate change management processes and the reliability of its performance reporting system.⁵ Although the Department found BellSouth’s OSS adequate, it also recognized that additional improvements in BellSouth’s OSS had been identified and were to be implemented under the direction of the Georgia Public Service Commission (“Georgia PSC”) and Louisiana Public Service Commission (“Louisiana PSC”) and that completion of the metrics audit under the auspices of the Georgia PSC should further improve the accuracy and reliability of BellSouth’s performance reports.⁶ Thus, the Department recommended that the

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

⁴ See DOJ Georgia/Louisiana I Evaluation at 13-38; DOJ Georgia/Louisiana II Evaluation at 7-20.

⁵ See DOJ Georgia/Louisiana II Evaluation at 8, 10, 13-20.

⁶ *Id.* at 21.

FCC approve the application subject to its review of certain concerns expressed in the Department's Evaluation.⁷

In this Evaluation, the Department focuses on developments that have occurred since the Georgia/Louisiana II Evaluation and the extent to which they demonstrate whether the Department's concerns are being addressed. BellSouth's Application demonstrates that, in conjunction with the state commissions, it has made substantial progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that it approve BellSouth's application.

I. State Commission Proceedings

The Alabama Public Service Commission ("Alabama PSC") found BellSouth had met the checklist requirements of Section 271; concluded that BellSouth's OSS are sufficiently similar to those in Georgia to justify reliance on the third-party test conducted in Georgia; adopted on an interim basis the performance measures and penalty plan approved by the Georgia PSC, with plans to establish a proceeding to consider adopting the performance measures and penalty plan approved in Florida; and established UNE rates in May 2002.⁸

The Kentucky Public Service Commission ("Kentucky PSC") found that BellSouth had met the requirements of the competitive checklist; relied on the third-party test conducted in Georgia given evidence that BellSouth's OSS are functionally equivalent in Georgia and

⁷ *Id.* at 21-22.

⁸ Alabama PSC Comments at 171, 250; BellSouth Br. at 45.

Kentucky; adopted the performance measures and penalty plan approved by the Georgia PSC; and established UNE rates in December 2001.⁹

The Mississippi Public Service Commission ("Mississippi PSC") found that BellSouth had met the requirements of the competitive checklist of Section 271; found that BellSouth's OSS are the same across the nine-state region according to the FCC's criteria; adopted the performance measures approved by the Georgia PSC; approved a performance penalty plan to take effect once BellSouth exercises a grant of interLATA authority; and established UNE rates in October 2001.¹⁰

The North Carolina Utilities Commission ("North Carolina UC") found that BellSouth had satisfied its obligations under the competitive checklist; concluded that BellSouth's OSS are the same throughout its region; adopted the performance measures and penalty plan approved in Georgia until the effective date of the order in its own permanent performance measures docket; and in a staggered proceeding between 1997 and 2002 established UNE rates, which will be re-examined in a new proceeding already begun.¹¹

The South Carolina Public Service Commission ("South Carolina PSC") found BellSouth had met the requirements of the competitive checklist; concluded that BellSouth's OSS are the same throughout its region; adopted the performance measures approved by the Georgia PSC, and directed BellSouth to develop an additional measure relating to change management; adopted a performance penalty plan; and ordered UNE rates in November 2001.¹²

⁹ Kentucky PSC Comments at 2-3, 17, 29-30, 41-42.

¹⁰ Mississippi PSC Comments at 2-3, 8, 10-13, 16.

¹¹ North Carolina UC Comments at 154, 159, 164, 268-69; BellSouth Br. at 55-59.

¹² South Carolina PSC Comments at 1; South Carolina PSC Section 271 Order at 22, 24-25, 27-28, 78, 120; BellSouth Br. at 54.

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹³ But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.¹⁴ The following table reports CLEC entry in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

¹³ See DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (Footnote omitted.)).

¹⁴ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

CLEC Entry by State¹⁵

		Alabama	Kentucky	Mississippi	North Carolina	South Carolina
Total Lines ¹⁶		2,120,584	1,298,043	1,386,011	2,786,354	1,619,223
Total Bus Lines		722,688	403,927	441,469	1,100,185	551,661
Total Res Lines		1,397,896	894,116	944,542	1,686,169	1,067,562
CLEC Shares	% Total Lines	11.2	7.3	8.0	12.9	10.7
	% Total Bus	25.1	14.6	13.1	27.0	22.6
	% Total Res	4.0	4.0	5.5	3.6	4.6
	% Bus. Fac-B	17.1	8.0	5.1	21.9	15.6
	% Bus. UNE-P	7.0	4.9	5.8	3.6	5.6
	% Bus. Resale	0.9	1.7	2.2	1.4	1.4
	% Res. Fac-B	1.1	1.0	0.03	1.1	0.5
	% Res. UNE-P	0.3	0.5	2.4	0.5	0.2
	% Res. Resale	2.6	2.5	3.1	2.0	3.8

¹⁵ See BellSouth Stockdale Aff. at 12 tbl. 2, 19 tbl. 5, 25-26 tbl. 8, 31 tbl. 11, 36 tbl. 14 (line counts as of March 2002) & Attachs. 12 at 1-3, 15 at 1-3, 18 at 1-3, 21 at 1-3 & 24 at 1-3; BellSouth Line Counts *Ex Parte* at 2. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

Estimated market share will vary depending on the methodology used to estimate facilities-based lines. BellSouth offers two sets of calculations, see BellSouth Stockdale Aff. ¶¶ 7-15, and as explained previously, the Department relies on estimates based primarily on E-911 database entries (BellSouth's Method 2). See, e.g., DOJ Georgia/Louisiana I Evaluation at 8 n.24. In any event, the effective difference between the two methods is small, resulting in estimates that CLECs serve between, respectively, 11.5 (Method 1) and 11.2 (Method 2) percent of Alabama lines, 9.3 and 7.3 percent of Kentucky lines, 9.2 and 8.0 percent of Mississippi lines, 14.3 and 12.9 percent of North Carolina lines, and 11.7 and 10.7 percent of South Carolina lines. BellSouth Stockdale Aff. at 10 tbl. 1, 12 tbl. 2, 18 tbl. 4, 19 tbl. 5, 24 tbl. 7, 25-26 tbl. 8, 30 tbl. 10, 31 tbl. 11, 35 tbl. 13, 36 tbl. 14.

¹⁶ Figures report total lines in BellSouth's service area in these states, each of which has several incumbent local exchange carriers other than BellSouth. See BellSouth Stockdale Aff. ¶¶ 16, 26, 36, 42, 49.

Given the regional nature of BellSouth's OSS,¹⁷ the Department evaluates the state of entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a specific mode in a specific state. In the states addressed in this application, the levels of entry and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from BellSouth lead the Department to conclude that opportunities are available to competitive facilities-based carriers serving business customers. In these states, however, there is less competition to serve residential customers via facilities (including UNE loops) and to serve business and residential customers via other modes of entry. The Department recognizes that the systems and processes serving these five states are largely the same as those at issue and approved in the Georgia/Louisiana proceeding and therefore, notwithstanding the lower levels of competition in these five states, finds the OSS sufficient to support competitive entry subject to the concerns discussed below.

III. Nondiscriminatory Access To BellSouth's OSS

The Department's Georgia/Louisiana II Evaluation concluded that BellSouth had made sufficient improvements to its OSS to merit approval of its application.¹⁸ The Department recognized, however, that important efforts to improve BellSouth systems and processes were continuing, and the Department expected that additional progress would be made.¹⁹ In its *Georgia/Louisiana Order*, the FCC agreed that BellSouth was offering nondiscriminatory access

¹⁷ BellSouth asserts that its OSS is regional in nature, BellSouth Br. at 60-66, and the FCC found the OSS to be the same in Georgia and Louisiana based in part on an independent third-party audit finding sameness across the BellSouth nine-state region, *FCC Georgia/Louisiana Order* ¶ 109-10. Thus, it is appropriate to take into consideration the KPMG testing in Florida and actions taken by the Florida and Georgia PSCs.

¹⁸ DOJ Georgia/Louisiana II Evaluation at 2-3, 21-22.

¹⁹ *Id.* at 11, 18, 21.

to its OSS²⁰; however, it also noted several areas it intended to monitor, and where it was prepared to take enforcement action if needed.²¹

Although commenters have raised a number of issues relating to BellSouth's OSS, the Department's concerns continue to focus on the change management process. The Department believes that significant progress has been made, but important steps should be taken to further improve BellSouth's change management process.

A. The Need for CLEC Input in the Change Request Process

The Department's Georgia/Louisiana II Evaluation expressed concern that BellSouth had not always given adequate consideration to input from the CLECs regarding upgrades to the OSS software.²² However, the Department found encouraging BellSouth's proposal to provide for a larger CLEC role and its commitment to implement a substantial number of CLEC change requests this year.²³ The Department's concern reflects KPMG's finding in the Florida OSS test that BellSouth was not properly accepting CLEC input on CLEC-affecting OSS changes.²⁴ In its *Georgia/Louisiana Order*, the FCC concluded that:

While we find BellSouth's performance to be adequate, we note that it is important that BellSouth continue to work collaboratively with competitive LECs through the Change Control Process on prioritization issues, provide competitive LECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes and implement changes in a timely manner. Should any problems in this regard develop

²⁰ *FCC Georgia/Louisiana Order* ¶ 101.

²¹ *See, e.g., id.* ¶¶ 118, 158, 195.

²² DOJ Georgia/Louisiana II Evaluation at 15-17.

²³ *Id.* at 16-18.

²⁴ KPMG FL OSS Test Exception 88.

such that the requirements of section 271 are no longer met, we are prepared to take appropriate enforcement action.²⁵

Under the auspices of the Georgia PSC and the Florida Public Service Commission ("Florida PSC"), BellSouth and the CLECs are continuing to engage in a process for establishing new procedures for prioritizing and implementing CLEC change requests.²⁶ KPMG's recently-issued *Draft Final Report* states that the BellSouth proposals to increase CLEC participation in the prioritization of change requests would, if implemented, address the concerns identified in the exception.²⁷ Pursuant to these proposals, adopted by the Florida PSC on July 23, 2002, BellSouth will allocate one-half of planned production releases, after fixes for defects and mandated changes, to the CLECs for new features.²⁸

In this Application BellSouth describes a number of additional positive developments relating to its change control process that have occurred since the Department filed its Georgia/Louisiana II Evaluation. For example, BellSouth has agreed to accept the CLECs' proposed definition of "CLEC Affecting" in the change management document, significantly increasing the scope of BellSouth OSS activity that will be disclosed to the CLECs.²⁹ The Department anticipates that such additional disclosure should prevent further instances such as that in which BellSouth apparently did not give advance notice to CLECs that orders designating BellSouth as the long distance carrier would be rejected.³⁰ Advance notice of such OSS changes

²⁵ *FCC Georgia/Louisiana Order* ¶ 193.

²⁶ Georgia PSC Georgia/Louisiana II Comments at 26-27; Florida PSC Staff CCP Proposal at 6-7.

²⁷ *KPMG FL Draft Final Report* at RMI 14-19; *see also* BellSouth FL OSS Test *Ex Parte* at 2 (describing the BellSouth proposals).

²⁸ Florida PSC Staff CCP Proposal at 6; Florida PSC Vote Sheet.

²⁹ BellSouth Stacy Aff. ¶ 157.

³⁰ *See* WorldCom Comments at 6-7; WorldCom Lichtenberg Decl. ¶¶ 25-26.

should give CLECs an opportunity to adjust their method of writing orders or to raise objections to the change.

An important issue still remains, however, regarding whether BellSouth is committing sufficient resources overall to the process of upgrading the interfaces to its OSS used by the CLECs. AT&T maintains that BellSouth's current schedule for implementing CLEC change requests will not substantially reduce the backlog of CLEC requests until May 2003 at the earliest.³¹ CLECs advocate that BellSouth be required to implement prioritized CLEC change requests within a fixed period of time.³² This issue is currently before the Georgia and Florida PSCs.³³ As the Department's Georgia/Louisiana II Evaluation states, this judgment requires a difficult balancing of interests.³⁴ The Department expects that BellSouth will cooperate in the resolution of this question and be responsive to the states' determinations, which should be made shortly.

**B. Conformance with Change Management Procedures
When Implementing OSS Changes**

The Department's Georgia/Louisiana II Evaluation expressed concerns regarding the process by which BellSouth released changes to its OSS software.³⁵ These concerns reflected Exception 157 opened by KPMG in the Florida OSS test, which found that BellSouth had not

³¹ AT&T Comments at 10-11. Several CLEC comments illustrate the competitive significance of implementing CLEC change requests. *See, e.g.*, Birch Comments at 4-13 (discussing the need for mechanized process to remove phantom DSL codes to avoid manually processing); Covad Comments at 7-13 (explaining need for electronic ordering of certain types of DSL loops).

³² CLEC Coalition/BellSouth CCP Redline/Greenline at 24-25.

³³ Florida PSC Staff Change Request Implementation Proposal at 3-6; CLEC Coalition/BellSouth CCP Redline/Greenline at 24-25.

³⁴ DOJ Georgia/Louisiana II Evaluation at 17. The Department commends the state commissions' work in this area.

³⁵ *Id.* at 10, 15-18.

followed proper internal testing procedures in releasing software upgrades, resulting in a failure to detect a number of defects before the new software was placed into production.³⁶

In its *Georgia/Louisiana Order*, the FCC stated, “we share the Department of Justice’s concern that software releases with numerous defects inhibit smooth transitions between releases and we plan to monitor BellSouth’s performance in this regard.”³⁷ The Commission also noted that “new metrics being developed in Georgia will measure how well BellSouth fixes defects within the required time frames. Should BellSouth’s performance in this regard decline such that it substantially degrades OSS performance, we may take appropriate enforcement action.”³⁸

Subsequent to the *Georgia/Louisiana Order*, BellSouth implemented Release 10.5, which also contained a number of defects that had not been discovered in pre-release testing.³⁹

KPMG’s *Draft Final Report* discussed Exception 157 relating to defects in OSS upgrades and found that BellSouth has not satisfied three of the testing criteria for Interface Development.⁴⁰

To address KPMG’s concerns regarding defects in BellSouth’s OSS releases, on July 22, 2002, the Florida PSC ordered BellSouth to implement additional performance measures relating to (1) the number of defects in future releases; (2) the interval within which BellSouth corrects such defects; and (3) the validation of software by BellSouth following its releases.⁴¹ The order noted

³⁶ Exception 157 stated that “[b]ased on the number of defects encountered in BellSouth releases 10.2 and 10.3, however, it appears that the BellSouth software/interface development methodology is not consistently followed.” *KPMG FL Draft Final Report* at RMI 81.

³⁷ *FCC Georgia/Louisiana Order* ¶ 195.

³⁸ *Id.*

³⁹ WorldCom Comments at 2; WorldCom Lichtenberg Decl. ¶ 8.

⁴⁰ *KPMG FL Draft Final Report* at RMI 81-85, 101-02; see also *id.* at RMI 101-02 (“KPMG Consulting reviewed the results of Release 10.5 to ensure adherence to the BellSouth quality assurance process. As of June 10, 2002, there have been eighteen (18) software and six (6) documentation defects identified in Release 10.5. KPMG Consulting amended Exception 157 to reflect these additional issues, and this exception remains open.”).

⁴¹ Florida PSC Software Defect Order at 11-12.

the significant impact that defective software releases have on CLECs' use of BellSouth's OSS and expressed concern that dedication of resources to correct the deficiencies renders them unavailable for implementation of change requests, thus contributing to the backlog of unimplemented change requests.⁴²

BellSouth states that it is taking steps to reduce the number of defects. First, it plans to use an expanded set of test orders for the testing of future releases, which it believes should reduce the number of defects not discovered until after its software is placed into production.⁴³ Second, BellSouth is changing its procedures to provide for CLEC input on whether a release should enter production in cases where a known defect would have a significant impact on the CLEC and where it has tested the release.⁴⁴

BellSouth appears to be cooperating with state regulators and the CLECs to determine necessary changes in its pre-release procedures and testing, and the Department expects that if additional resources are needed to meet these requirements, BellSouth will provide them. The Commission should carefully monitor BellSouth's future releases, especially the August 24 Release 10.6.

IV. Further BellSouth Changes to Reported Performance Measures

The fact that BellSouth made changes to its service order accuracy measure without advance public notice or the approval of the relevant state commissions was a significant issue in the Georgia/Louisiana II proceeding. Given the clear concerns raised and the support for advance

⁴² *Id.* at 7, 9-10.

⁴³ BellSouth FL OSS Test *Ex Parte* at 10.

⁴⁴ *Id.* at 10-11.

notice and approval processes expressed by the Department,⁴⁵ the Georgia and Louisiana PSCs,⁴⁶ and the FCC,⁴⁷ the Department is troubled that BellSouth has made many additional changes to its reported performance metrics, especially in converting from its computer platform PMAP 2.6 to PMAP 4.0, without notifying CLECs and regulators until after the changes were implemented.⁴⁸

BellSouth argues that implementing PMAP 4.0 was important because of limitations with PMAP 2.6 and that changes were necessary to correct prior implementation errors.⁴⁹ Both of these factors are significant. Changing the architecture of PMAP appears to be a positive development,⁵⁰ and errors should be corrected if reported metrics are to be reliable. Yet neither addresses the Department's key concern: the recurrence of *undisclosed* metrics changes.

Because of the potential impact on the reliability and usefulness of reported performance data, an incumbent should provide advance public notice of *all* metrics-related changes. First,

⁴⁵ DOJ Georgia/Louisiana II Evaluation at 13-14.

⁴⁶ Georgia PSC Georgia/Louisiana II Reply Comments at 8-9 (for example, the Georgia PSC "agree[d] . . . that changes to performance measurement calculations 'should be made only with public notice and the concurrence' of th[e Georgia] Commission" and indicated its intent to impose notice and approval procedural requirements (quoting DOJ Georgia/Louisiana II Evaluation at 14)); Louisiana PSC Georgia/Louisiana II Reply Comments at 6-7 (same).

⁴⁷ In granting the application, the FCC expressly supported requiring BellSouth "to provide prior notice of any proposed changes to the calculation of performance measures prior to implementation." *FCC Georgia/Louisiana Order* ¶ 159 n.575.

⁴⁸ See generally BellSouth Varner Aff. Exs. 14, 35 (BellSouth disclosure letters to the Georgia PSC). BellSouth did not provide notice until after it had implemented the new calculations and posted preliminary metrics for the month for which the new calculations took effect. SECCA Emergency Motion at 2; cf. DOJ Georgia/Louisiana II Evaluation at 13 n.55. Although the Georgia PSC had not issued formal requirements, it clearly expected BellSouth to provide advance public notice of changes. Georgia PSC PM Change Notification Order at 2-4; Georgia PSC Georgia/Louisiana II Reply Comments at 8-9.

⁴⁹ See, e.g., BellSouth Varner Aff. ¶¶ 82, 97-101. The Department takes no position on the appropriateness of these changes.

⁵⁰ BellSouth explains that the limitations in the older platform necessitated, not merely an incremental upgrade, but a new architecture and new code. See *id.* ¶ 82. The Department hopes that "benefits in the development process . . . and maintenance," *id.*, resulting from the "streamlined and simplified code" in PMAP 4.0, *id.* ¶ 74, will end BellSouth's long series of metrics coding problems, see DOJ Georgia/Louisiana I Evaluation at 32-35.

metrics calculated under new rules may no longer be directly comparable to metrics previously reported. Second, changes to audited measures limit the applicability of those audits. Third, changes could have substantive implications on commission-established rules. The incumbent may argue that a change has no such impact, but CLECs could conclude otherwise and should have an opportunity to present their views to the commission before implementation. To ensure a meaningful opportunity for comment and adequate time for state commissions to consider issues raised, disclosure should include sufficient information for CLECs to understand the nature of, reason for, and impact of the changes⁵¹ and needs to occur well in advance of implementation.

Following BellSouth's disclosures, on June 12, 2002, CLECs filed an emergency motion with the Georgia PSC raising issues as to the appropriateness of these changes and the need for a formal process requiring prior disclosure of future changes.⁵² The Georgia PSC's order in response to the motion requires BellSouth to provide advance notice of "any change to the method by which its performance data is calculated," specifies types of information that must be disclosed, and provides a procedure for industry discussions and commission filings.⁵³ The Department expects that such requirements will, with the necessary monitoring,⁵⁴ prevent the further recurrence of undisclosed, unapproved metrics changes.

⁵¹ The Department believes that the changes described in BellSouth's initial disclosures were poorly documented. Further, the disclosures do not appear to contain the level of information contemplated by the Georgia PSC. See Georgia PSC Georgia/Louisiana II Reply Comments at 8-9.

⁵² SECCA Emergency Motion.

⁵³ Georgia PSC PM Change Notification Order at 2-4. Similar action may be appropriate in other states, however, to cover changes relating to measures that are different from the Georgia measures.

⁵⁴ In this regard the Department notes that, notwithstanding an order requiring BellSouth to notify the North Carolina UC within five days of any metrics changes, North Carolina UC Notice of Decision ¶ 5, BellSouth apparently did not notify the commission of its numerous metrics changes discussed above until July 19, 2002, *see generally* BellSouth NC PMAP Notice.

V. Conclusion

BellSouth's Application demonstrates that, in conjunction with the state commissions, it has made substantial progress in addressing issues previously identified by the Department. The Commission should review the concerns expressed in this Evaluation, and if it is satisfied that these concerns have been addressed, the Department recommends that it approve BellSouth's application.

Respectfully submitted,

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July 30, 2002

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on July 30, 2002.

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